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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/686,893 | 10/16/2003 | Hidetoshi Ishida | YAO-3990US3 | 8582 |
| 23122 | 7590 | 12/20/2005 | EXAMINER | |
| RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980 | | | JEFFERSON, QUOVAUNDA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2823 | |

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,893

Applicant(s)

ISHIDA ET AL.

Examiner

Quovaunda Jefferson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

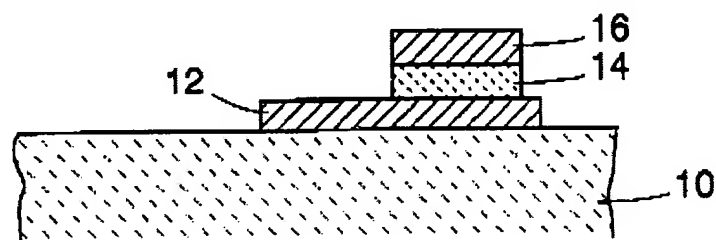
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Azuma, US Patent 5,822,175 and Zafar, US Patent 5,750,419. See Azuma, Figure 1A and Zafar, Figure 3.



Fig. 1a



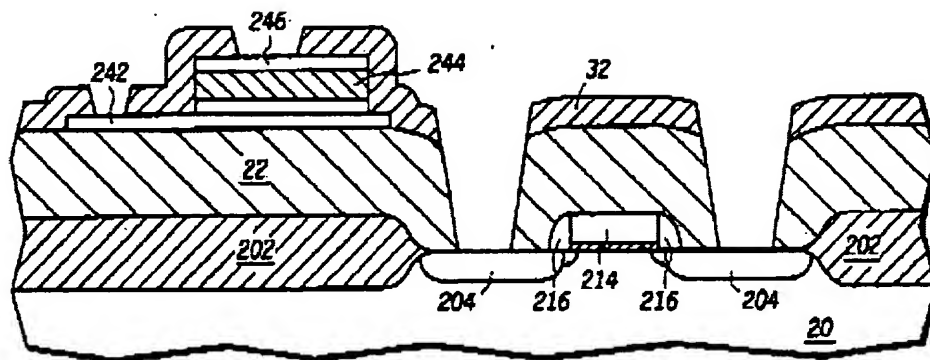


FIG. 3

Regarding claims 8-11, Azuma teaches a semiconductor device having a titanium material layer **14** and a silicon oxide layer (column 4, lines 3-14), the titanium material layer includes at least one material selected from the group consisting of BaTiO_3 , SrTiO_3 , $\text{Ba}_x\text{Sr}_{(1-x)}\text{TiO}_3$, and similar Group IIA metal titanate (abstract) the titanium material is provided between an upper electrode **16** and a lower electrode **12** (column 4, line 20). Azuma fails to teach a contact window is provided for each of the upper electrode and the lower electrode. Zafar teaches a contact window is provided for each of the upper electrode **246** and the lower electrode **242** (Figure 3). It would have been obvious to one skilled in the art to combine the teachings of Zafar with that of Azuma because Zafar's method discloses a method for a more stable nonvolatile polarization that is not likely to change during subsequent processing steps (Zafar, column 1, lines 36-38)

Azuma and Zafar fail to teach produced by a process including the step of etching at least one of the titanium material layer and the silicon oxide layer using an

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etchant, wherein the etchant includes a mixed liquid of HCl, NH₄F and H₂O; and setting a molar ratio of NH₄F/HCl in the mixed liquid, the molar ratio being set based on which of the at least one of the titanium material layer and the silicon oxide layer is to be etched, wherein the step of setting a molar ratio of NH₄F/HCl includes setting the molar ratio of NH₄F/HCl to less than 1 in the case where the titanium material layer is to be etched, wherein the step of setting a molar ratio of NH₄F/HCl includes setting the molar ratio of NH₄F/HCl to less than 1 in the case where the silicon oxide layer is to be etched, wherein the step of setting a molar ratio of NH₄F/HCl includes setting the molar ratio of NH₄F/HCl in the range from about 0.8 to about 1.2 in the case where both the titanium material layer and the silicon oxide layer are to be etched.

However, according to the MPEP, Section 2113, "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process".

In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quovaunda Jefferson whose telephone number is 571-272-5051. The examiner can normally be reached on Monday through Friday, 8AM to 4:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Smith can be reached on 571-272-1907. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

qvj

A handwritten signature in black ink, appearing to read 'W. David Coleman', with a stylized, flowing script.

**W. DAVID COLEMAN
PRIMARY EXAMINER**